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# Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources

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## Extended Version

A discussion note prepared by FAO, IFAD, UNCTAD and  
the World Bank Group to contribute to an ongoing global dialogue.

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## Introduction

Many studies show that investment to increase productivity of owner-operated smallholder agriculture has a very large impact on growth and poverty reduction. The fact (ASTI/CGIAR, 2009) that investment to bring about such productivity increases in Africa has historically been in 2005 PPP dollars only a fraction of what has been spent in Asia-Pacific and LAC countries is often seen as one of the reasons for Africa's lackluster record in terms of rural growth since the Green Revolution began. Thus any investment—public or private—in lower income countries and rural areas that can close this gap is desirable in principle. Yet even when investments seem to hold promise of raising productivity and welfare and are consistent with existing strategies for economic development and poverty reduction, it is important to also ensure that they respect the rights of existing users of land, water and other resources, that they protect and improve livelihoods at the household and community level, and that they do no harm to the environment.

A host of factors has recently prompted a sharp increase in investment involving significant use of agricultural land, water, grassland, and forested areas in developing and emerging countries. These include the 2008 price spike in food and fuel prices, a desire by countries dependent on food imports to secure food supplies in the face of uncertainty and market volatility, speculation on land and commodity price increases, search for alternative energy sources, and possibly anticipation of payments for carbon sequestration. The range of actors includes agro-enterprises in agri-food, biofuels, and extractive industries, private equity and other financial institutions, government-linked companies including sovereign funds, and individual entrepreneurs. Yet figures reported in the press and even by governments are often unreliable, partly because of data quality issues, partly because initial expectations have often not materialized, and partly because many transfers of resource rights are negotiated in private, which causes still further suspicion and speculation. Nevertheless, it is true that some countries have been confronted with informal requests amounting to more than half their cultivable land area, and other countries are actively seeking major investments as well, so the phenomenon seems to have traction.

Private investment in the agricultural sector offers significant potential to complement public resources. Many countries with reasonably functioning markets have derived significant benefits from it in terms of better access to capital, technology and skills, generation of employment, and productivity increases. Moreover, new technology, the emergence of value chains, demands for traceability, the need to adhere to rigorous standards, and consumer demands arguably favor greater scale and integration. Some large investments have managed to achieve broad-based benefits via contract farming, other outgrower arrangements, and joint ventures with local communities, by leasing rather than acquiring the land or by formulating innovative schemes for sharing both risks and rewards.

On the other hand, where rights are not well defined, governance is weak, or those affected lack voice, there is evidence that such investment can carry considerable risks of different types. Risks include displacement of local populations, undermining or negating of existing rights, increased corruption, reduced food security, environmental damage in the project area and beyond, loss of livelihoods or opportunity for land access by the vulnerable, nutritional deprivation, social polarization and political instability. Moreover, many large farming ventures attempted in the past have proven unsuccessful. Sometimes mistaken beliefs in economies of scale in agricultural production rather than value addition and better linkages to markets have saddled several countries with subsidy-dependent large farm sectors that provided few economic or social benefits.

To better spread the benefits and balance opportunities with risks in major investment programs, industry initiatives, such as the Extractive Industry Transparency Initiative (EITI), the Equator Principles, and the Santiago Principles, have formulated standards for specific subsectors or investor categories, and many institutions and large enterprises have made efforts at formulating internal codes of their own. Arguably, the magnitude of the

present phenomenon and the hazards involved warrant a broader effort to build on ongoing private initiatives that involve some mix of guidelines, codes of good or best practice, and perhaps even independently verifiable performance standards coupled with benchmarking. However, the extent of actual application of such systems remains limited in general. And for land/water-intensive agro-investing, no agreement has been reached yet by private industry as to whether and how to adopt voluntary self-regulation. That probably reflects several realities: first, that agro-investing in the present context of multiple crises and future uncertainties is a very complex endeavor in itself; secondly, the fact that circumstances vary considerably between one county and another, or one deal and another; and third, because the investment objectives and the investor types are not homogeneous.

To generate the empirical evidence needed to guide its staff and others in this area, early in 2009 the World Bank began an in-depth study (“Large-Scale Acquisition of Land Rights for Agricultural or Natural Resource-based Use”) in some 20 of the most involved countries. It focuses on the policy framework, overall magnitudes, and detailed analysis of social, economic, and environmental impacts of specific cases. The principles recommended in this note are based on preliminary evidence from this ongoing work, as well as the accumulated experience of a broad set of informed observers and partners within and outside the World Bank Group, including FAO, IFAD, and UNCTAD. Considerable consultation has also occurred with all other relevant international agencies.

These organizations have joined together to recommend the principles presented below. The document concludes with anticipated next steps, which point toward a toolkit of best practices, guidelines, governance frameworks, and possibly codes of practice by the major sets of private actors. All interested stakeholders and observers will be encouraged to share their concerns and contributions via an open architecture knowledge platform that will subsume this toolkit but also offer additional functionality such as e-learning modules, a blog, and links to other resources.

## **RESPECTING LAND AND RESOURCE RIGHTS**

### ***Principle 1: Existing rights to land and associated natural resources are recognized and respected.***

Existing use or ownership rights to land, whether statutory or customary, primary or secondary, formal or informal, group or individual, should be respected. This requires: (i) the identification of all rights holders; (ii) legal recognition of all rights and uses, together with options for their demarcation and registration or recording; (iii) negotiation with land holders/users, based on informed and free choice, in order to identify the types of rights to be transferred and modalities for doing so; (iv) fair and prompt payment for all acquired rights; and (v) independent avenues for resolving disputes or grievances. While a countrywide systematic identification and registration of rights is desirable in the long run, countries with limited resources may do well to initially focus efforts on areas with high agro-ecological and infrastructure potential and expand from there.

Many investments requiring access to land on a large-scale focus on areas that outsiders have often considered to be ‘empty’ or ‘marginal’. Yet it is important to recognize that there are few areas truly ‘unoccupied’ or ‘unclaimed’, and that frequently land classified as such is in fact subject to long-standing rights of use, access and management based on custom. Failure to recognize such rights, including secondary ones, will deprive locals of key resources on which their wealth and livelihoods depend. Lands that have been abandoned by internally displaced persons or which could be used by them pose particular challenges. It is important that efforts to make land available to investors not undermine current or future livelihood opportunities for those displaced involuntarily.

Recognition of rights to land and associated natural resources, together with the power to negotiate their uses, can greatly empower local communities and such recognition should be viewed as a precondition for direct negotiation with investors. Specific attention to land rights by herders, women, and indigenous groups that have often been neglected in past attempts is critical to achieving a fair, inclusive outcome.

## 1.1 Why it matters

In most societies, and especially at low levels of development, land is not only a key productive asset but also serves as a source of drinking or irrigation water, a safety net, old age insurance, and determinant of social status. Ancestral lands may have additional significance, including burial grounds.

In most of the relatively land-abundant countries of interest to investors, even land that outsiders would consider as ‘unused’ and to which no formal records exist is normally subject to long-standing traditional uses or common property claims.

In many countries of interest to investors, the state ‘owns’ large amounts of land, which may make it easier to transfer such land to outsiders in less than fully transparent ways, even if it is still occupied by traditional users. The fact that governments often do not know the extent or location of their holdings, or that by law all land that is not ‘productively used’ can administratively be transferred to other uses, increases such dangers. This problem may be further exacerbated by legal provisions that require that land be first expropriated before it can be transferred to investors, which prevents outsiders from direct negotiations with right holders and instead requires them to interact with a central Ministry or public institution.

Loss of land and other resource rights to an investment project without recognition of quite valid sensitivities and without full compensation will have impacts on those affected well beyond their immediate economic well-being. Concern about neglect of or inappropriate compensation for local land rights, in particular secondary ones, is a key reason for public criticism of large-scale investment. Neglecting these can result in the disruption of livelihoods and the dislocation of communities. A key role for the public sector in countries where this is an issue is thus to identify and map public lands in a field-based process with proper publicity and consultation. Broad access to information, as well as provisions to recognize secondary rights to land and, where relevant, to other key resources such as water, will have to be made to avoid negative spillover consequences. Particular attention needs to be paid to lands that had been owned or cultivated by internally displaced populations.

While it is possible to address these on a case by case basis once interest for investment in a specific location has been articulated, doing so has disadvantages. Rumors of impending investment can already set off processes of land grabbing by local elites that may hurt marginal and vulnerable groups, it is more costly per plot registered and less flexible or comprehensive than a systematic process; and the need to act under considerable time pressure creates risks of neglecting secondary rights by vulnerable groups. To avoid these drawbacks, land and resource rights in areas with high potential should be identified *before* considering any major investment proposal.

## 1.2 What can be done?

Key results to pursue with respect to land and resource rights are three: (a) that land-related rights are recognized and demarcated; (b) that procedures for transferring such rights are clearly defined and applied in a transparent manner; and (c) that expropriation, in kind rather than in cash, is strictly limited to situations that affect the public interest rather than routinely applied to transfer of land to private investors.

### 1.2.1 Recognition and demarcation of land rights

Historically, many countries considered land that was not formally registered to be the property of the State, which government could dispose of at will without considering actual occupation. This practice effectively failed to recognize customary tenure. For example, in Indonesia, about 70% of the country’s land area has been classified as ‘forest’ since the 1970s, thus prohibiting land ownership by individuals or groups. Yet a large portion of this land is degraded and no longer covered with forest. Often it has been cultivated by ‘squatters’ who have made considerable investments over time. Neglect of such possessory rights is a major source of conflict, and it undermines effective land use and management. Moreover, as only rights that are formally recorded (17 million out of an estimated total of 80 million parcels) enjoy legal protection. And the fact that there is no option for formally recognizing group rights does in many cases force individualization of what is *de facto* still communal property, which leads to conflicts and provides opportunities for land-grabbing by elites.

Traditionally, many jurisdictions considered land that was ‘uncultivated’, even if only temporarily, as freely available for transfer to others. This could imply that even those who cultivated it for generations had only precarious land rights that could easily be lost—for instance to make room for “strategic” investments—with little or no compensation.

Recently, many countries have adopted new legislation to recognize customary tenure, to make lesser (oral) forms of evidence admissible, to strengthen women’s land rights, and to establish decentralized land institutions. However, awareness and implementation are often lagging. In Uganda, for example, less than a third of households know about the existence of a new land law, leaving the rest highly vulnerable. In Mozambique, more than 10 years after passage of a path-breaking land law that allows for registration of community rights, only some 2.5% of communities have their land rights demarcated and registered.

To implement existing legislation and reduce vulnerability of existing users, there is a need to demarcate the rights to community land in a participatory and low-cost way that can be implemented quickly. The example of Mexico illustrates how focusing on documenting group rights can allow rapid progress. As discussed in more detail in Box 1, the country systematically demarcated and registered rights to more than 100 million ha over a 6 year-period in a way that simultaneously improved local governance and resolved conflict.

Box 1: Starting in the late 1990s, Mexico implemented a massive program (PROCEDE) to physically delimit land in its *ejido* sector in a highly participatory process allowing users to have some or all of their parcels registered as communal land (pastures, forests, etc.) or as individual property with transferability rights limited to the community. In a 6-year period, this program registered claims to more than 100 mn ha, roughly equal to the combined size of France and Spain. The process also allows communities to either establish joint ventures with outsiders or, through a decision taken by the general assembly with a three-quarter majority, to make all *ejido* land fully transferable. However, even at the rather high level of per capita income achieved in Mexico, less than 15% of *ejidos* –mostly those in peri-urban lands- have opted for this option, and most instead go for joint ventures. As of June 2009, 1,777 joint ventures, many of them with multi-nationals, with a total value of US \$ 568 million have been initiated, and some two thirds of certified *ejidos* (19,000 out of 28,896) have requested their inclusion in this inventory.

In Peru, a Bank-supported program has thus far registered some 70% of individual properties in rural and urban areas while at the same time granting property titles to more than 80% of peasant farming communities (on 23 million ha) and indigenous communities in the Amazon. However, less than one third of peasant communities, and only 85 out of 1,510 indigenous communities have been mapped, leaving them vulnerable to territorial challenges - while creating a perception by private investors interested in land that there is ‘nobody to talk to’. There is consensus on the need for accelerating mapping of boundaries of these communities and a major PPP effort to this end is underway.

Box 2: While less inclusive in terms of common lands and community structures, three regions in Ethiopia were able to certify and register more than 25 million plots involving about 6 million households in a pro-poor, participatory, quick, and cost-effective way over a short period (2003-05). The process starts with local awareness campaigns, sometimes with the distribution of written material, followed by elections of land use committees in each village. After some training, these committees systematically resolve existing conflicts, if necessary with assistance from elders, and refer cases that cannot be settled amicably to the courts. This is followed by demarcation and surveys of undisputed plots in the presence of neighbors with issuance of land use certificates which, for married couples, include names and pictures of both spouses. As land remains state owned with strong restrictions on transfers, certificates document only heritable use rights. Still, in a nation-wide survey more than 80 percent of farmers indicated that they perceived an increased possibility of receiving compensation in cases where land is taken for outside investment. Fully 95 % of farmers surveyed who had not yet received certificates indicated they would like to acquire them. At an estimated cost of just \$1 per plot, this shows that modern technology can make low-cost approaches more feasible and facilitate systematic certification, which could help secure land use rights that can then be transferred to others whenever the transaction is beneficial to both parties.

While it is possible to identify land rights on a case by case basis once interest for investment in a specific location has been articulated, this has three disadvantages, namely: (i) rumors of impending investment can already set off processes of land grabbing by local elites that may hurt marginal and vulnerable groups; (ii) it is more costly than a systematic process; and (iii) the need to act under considerable time pressure creates a risk of

neglecting local rights that can in turn lead to political backlash. By contrast, initiating a process to recognize and systematically demarcate local populations' land rights—ideally complemented by land use planning that will assess suitability for different types of land use—before specific investor interest is expressed has several benefits. First, it creates a possibility for right holders to negotiate directly with investors, drawing in outside assistance as needed, to ensure an outcome that is accepted by and beneficial to all. Secondly, it significantly increases a country's or region's attractiveness for investment as it provides investors with critical information on what land may be suitable for their purpose and who to negotiate with. In fact, a number of land-abundant countries with potential for outside investment have recently embarked on such processes.

### **1.2.2 Use of expropriation is strictly circumscribed and involves prompt and fair compensation**

Many countries, e.g. China, Ethiopia, Tanzania, Nigeria, Sudan, and Zambia, require expropriation of land before it can be transferred to private investors. Such centralization adds complexity and discretion, makes direct negotiation impossible, and introduces uncertainty regarding the nature, amount and timing of compensation, much of which may be consumed by bureaucratic intermediaries. In Tanzania, land is vested with the village, but outside investment is only possible if it has been transferred into a separate category (General Land) through a complex process that discourages local participation in decisions about use and management of the land.

Where, as in many jurisdictions, occupancy rights are ineligible for compensation, this also runs a risk of making entire groups of land users worse off. Such negative aspects are often exacerbated by: (i) provisions that allow compensation only for improvements (as land is nominally state owned); (ii) partial and non-transparent processes for land acquisition and valuation; (iii) lack of independent avenues for appeal (where the responsible authority is often the same institution that undertook the expropriation in the first place); and (iv) an ad-hoc process of land disposal that is often perceived to be highly corrupt and frustrates private entrepreneurs by taking extremely long. This carries significant risks in terms of governance, loss of rights, or sub-optimum land use. A more flexible and fairer alternative would be to clearly regulate procedures for transferring use rights and reduce expropriation to the bare minimum. The case of Peru illustrates that this can be done without forestalling private investment (see Box 3).

Box 3: The case of Peru illustrates that putting stringent limits on the state's capacity to expropriate land may encourage private negotiation between the parties, something that can be desirable where land governance is weak. Expropriation in Peru is circumscribed in four major ways. First, it can be carried out only for clear reasons of public need (e.g. building a road or a bridge) and the law expressly mentions that expropriations are invalid if the state is not the direct beneficiary. Second, any expropriation must be authorized by Congress in a law explicitly spelling out the future use of the expropriated land, thus ensuring public scrutiny and debate. Third, expropriated owners have a legal right to monetary payment reflecting the good's market value (as assessed through independent court proceedings) plus remedy for damages. Finally, expropriations must meet mandatory deadlines. They will expire if the judicial process has not started six months after approval, or if court proceedings last longer than two years. Moreover, the property will revert to its owner if the expropriated good has not been used for the planned purpose within one year after the conclusion of court proceedings. As a result, private companies in need of land tend to favour direct negotiation with right holders, which are normally faster and more favourable to land owners, and the coercive power of the state to acquire land is invoked only as a last resort.

### **1.2.3 Clear and transparent mechanisms to transfer land rights**

While transparent principles for transfer are important, one needs to distinguish between public and private land. For public land, the state acts as a trustee of the nation. The proper way to fulfill this role is to restrict state land ownership to situations where externalities justify it. Where state ownership is not appropriate, the state should dispose of use or ownership rights to such lands either by devolving them to current users or through public auction by institutions that follow clear standards of ethical behavior and are regularly audited. If designed appropriately, such a mechanism will result in maximum return. By contrast, many of the countries currently under study by the Bank dispose of public land in an *ad hoc* way that can be a key source of corruption and patronage. Lease payments, even if only nominal, are often not collected, or audits not conducted. Quantifying the losses from this is difficult. However, the case of Ukraine, where a shift back from auctions to more discretionary

allocation of leases resulted in significant revenue losses, illustrates that such practices can have significant fiscal implications, especially for local governments, as well as undesirable impacts on governance.

For private land, the standard mechanism of land transfer is through direct negotiation with land owning parties. The arrangements adopted, which include individual lease or purchase agreements, have facilitated the emergence of very large farming companies that operate hundreds of thousands of ha (though generally in operational units not exceeding 10,000 ha) in Argentina and Brazil. In Eastern European countries, such as Ukraine, where individual land holdings are small, large farm operations that cultivate some 10,000 ha on average enter into hundreds of leases in a process often guided by local government who normally demand that investors provide additional social services. The case of Mexico (see Box 4) illustrates that, in cases where land rights are assigned to a group, issues of representation need to be clarified to ensure transferability and where technical capacity is deficient, communities should have access to technical support as needed. This implies that registration of group rights can be accompanied by policies to establish or strengthen accountable governance structures at the community level.

Box 4: In addition to registering rights and demarcating boundaries on the ground, property rights reform in Mexico helped to significantly improve and democratize community structures, thereby clarifying procedures to enter into joint ventures with outsiders, and reducing the scope for elite capture. The general assembly, as the *ejido*'s supreme decision-making body, elects at a minimum a governing board, which constitutes the legal representation of the community and which, by law, must rotate every three years, and an oversight council that is responsible for monitoring compliance with bylaws and proper procedures and auditing the executive committee. To do so, it can call on support from the Office of the Agrarian Ombudsman (*Procuraduria Agraria*), a Government institution charged with defending community land rights and building capacity that also supervises major *ejido* decisions (e.g. transitions to private property) and represents *ejido* members in court proceedings.

## ENSURING FOOD SECURITY

### **Principle 2: Investments do not jeopardize food security but rather strengthen it.**

Whenever there are potential adverse effects on any of aspect of food security (availability, access, utilization or stability), policy-makers should make provisions for the local or directly affected populations certain such that: (i) equivalent access to food is assured; (ii) opportunities for outgrower involvement and off-farm employment are expanded to protect livelihoods and raise incomes; (iii) dietary preferences are taken into account if the mix of products grown may change; and (iv) strategies to reduce potential instability of supply are adopted. Moreover, whenever the proposed project is large enough to affect food security at the national level, project design and approval should also consider these four kinds of aggregate impact.

### **2.1 Why it matters**

Agro-investments that place significant demands on resource rights might target crop agriculture, animal agriculture, forestry/agro-forestry, aquatic species—singly or in combination. Projects might have distinct or mixed policy objectives, ranging from productivity enhancement or value addition to area development, diversification, or export growth. The target market might be urban or foreign. A given project might decrease the immediate area destined for primary food production, or generate food products that are not directly relevant to local food consumption due to dietary preferences or price point, or else because the output is destined for processing. Not everything produced may be edible. For all of these reasons, it is difficult to generalize about potential impacts on food security. Nothing should be assumed; everything should be analyzed.

Specific concerns may arise regarding potentially negative impacts on the availability or domestic price of staple grains, oilseed or root crops, or perhaps with respect to diversion of scarce land, water, labor, grasslands or forested areas away from more traditional uses that provided livelihoods and sustenance to large numbers of people. Of particular concern are cases in which: (a) large tracts of land are shifted from production of food crops to non-food crops such as bio-fuel stocks or feed; (b) the food to be produced is destined mainly for export, even from areas that suffer chronic or intermittent food shortages the require relief; or (c) conversion to monoculture

using exotic germplasm may affect resilience to adverse weather, to pests and disease pressure, or work against consumer preferences and nutritional values.

## 2.2 What can be done?

The food security question is real and emotive, so should not be ignored investors, governments, communities, donors, or development agencies. A methodical way to handle this concern is to first clarify the concerns of different stakeholder groups upfront, then to identify competing objectives and evaluate alternative strategies for meeting them, next to assess potential interventions and associated impacts, and lastly to prioritize and adopt risk mitigation measures. One example of the latter might be “call options” written into investment agreements, which can prevent exit of unacceptably large food volumes from the country when specific market conditions occur. If this due diligence and collaborative planning is carried out well, then the potential for using large-scale agro-investment as a force to actually improve food security is quite good.

Some additional recommendations apply. First, major agro-enterprise investments should be consistent with national agricultural policies in general, and with national food policy in particular. Secondly, concerns about negative impacts on food security should be allayed as far as possible through adjustments in design. For example, if diversion of productive crop land away from food production is seen as an issue, remediation measures to adopt might include reclaiming degraded lands, choosing land that has not been previously been used for agriculture yet is not environmentally sensitive, or compensating by improving the productivity on other food producing areas through soil amendments, better technology or intensification. Third, attention should be given to improving the people’s ability to purchase food by making inputs and technology more available so that yields rise, by creating a better local market, or by better linking them to more profitable distant markets, or by generating downstream employment in packing sheds, processing operations, or ancillary services such as handling, transport or marketing.

Ensuring that local governments are meaningfully involved in design and negotiation can go a long way to help realize less direct opportunities for enhancing food security (see Box 5).

Box 5: The potential for exploring different modalities of production organization is high for a number of crops. *Jatropha* provides an interesting example. While some firms have requested tens of thousands of hectares to establish large-scale plantations, others use a business model that heavily relies on outgrowers, often drawing much of their supplies from expanding existing crop stands in marginal areas or field bounds where the crop has traditionally been used. In both Mali and Tanzania, firms have actually started operations. While issues relating to the overall economic feasibility of *jatropha* will need to be resolved, interviews with the investors point towards a number of desirable features, in particular (i) the scope for expanding supply without large-scale land acquisition or replacing traditional cultivation patterns; (ii) drawing on women as collectors, thus providing them with cash to improve their livelihood; (iii) use of by-products (glycerol for soap and press cake for fertilizer) in the local economy; (iv) oil extraction managed by farmers’ cooperatives that may own a stake in the overall enterprise. As there are few obvious economies of scale, and the use of locally produced biofuels in remote and marginal areas without access to the grid has been variously identified as an important niche where biofuels have a strong comparative advantage, further monitoring of this business model could have potential for more widespread application.

Vulnerability to weather-related shocks is another important determinant of local food security and seasonal malnutrition, especially in remote rural areas. While it is unrealistic to expect investors to make either of those topics their primary concern, slight modifications in project design can have a major impact on improved risk-coping ability and nutrition by local populations, often at little extra cost to investors. For example, the investors might be encouraged to set up community storage programs that reduce post-harvest losses and price volatility. It is important to note that food security does not necessarily mean food self-sufficiency. In the final analysis, exploiting a country’s comparative advantages in particular kinds of economic activity (whether agricultural or not), and within agriculture, specializing in products where there is competitive advantage (whether raw, processed or manufactured, and whether edible or not) may make a greater contribution to national food security than focusing on (e.g.) primary production of staple grains where national yields are below par. Yet there can still be winners and losers on the regional or local level which must be dealt with.



## ENSURING TRANSPARENCY, GOOD GOVERNANCE, AND A PROPER ENABLING ENVIRONMENT

**Principle 3: *Processes for accessing land and other resources and then making associated investments are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment.***

Lack of transparency creates distrust and deprives relevant actors of the possibility to resolve minor problems before they escalate into large conflicts. On the other hand, greater transparency will also reduce transaction costs for all involved, thus benefiting host countries and investors alike through more efficient competition. Clarity in the regulations governing investment incentives and the way in which they are applied also makes it more likely that host countries can attract investors who will make tangible contributions to long-term development.

To create a proper enabling environment, policies, laws, and regulations affecting the investment climate should be benchmarked against and brought into line with globally accepted best practices, even as institutions responsible for implementing them are strengthened. Specific steps worth mentioning in this regard include: (i) ensuring that all relevant information, including land potential and availability, core elements of prospective investments, and resource flows or tax revenues, be publicly available; (ii) helping institutions that handle investment selection, land transfers and incentives to follow principles of good governance, develop the capacity to operate efficiently and transparently, and be regularly audited; and (iii) making sure that an independent system to monitor progress towards a better investment climate is in place.

### 3.1 Why it matters

Productivity growth through entrepreneurial activity, capital deepening, and innovation is the primary driver of economic progress. Yet new enterprise formation, operation, and profitability are all impeded by deficiencies in the enabling environment, such as lack of clarity as to property rights, difficulty in enforcing contracts, rent-seeking behavior, red tape, slow judicial processes, and so on. It follows that establishing an enabling environment for agricultural enterprise that encourages and facilitates good investment is critical to achieving desirable outcomes.

If done well, resource-intensive agro-investments can generate new and higher paying jobs, upgrade the skills of the labor force, facilitate technology transfer, open new and better markets, and generate complementary infrastructure. Yet there are many examples where poor design or oversight of programs and project has led to delays, non-performance, or diversion of rents and benefits. The lack of transparency particularly has led to allegations of corruption and distrust that in the end either reduced these benefits or prevented them from being realized. Transparent processes, good governance, and adherence to the rule of law can benefit all parties by reducing the risk and cost of accessing resource rights, helping to maximize synergies with current and future infrastructure development, and by reducing the potential for conflict.

Different stakeholders can benefit from transparent processes in specific ways. Affected *communities or individuals* will be more likely to understand their rights and obligations, better able to hold other parties accountable, and more able to identify deals that support their long-term vision and goals. *Local or central governments* will be better able to attract desirable investment to locations with development potential and select those investments that generate positive social impacts, e.g. through knowledge spillovers, or increased tax revenue so as to improve public services. *Investors* will be able to negotiate directly with rights holders rather than government, more realistically assess the viability of projects, and rely on independent enforcement of contracts and respect for property rights.

### 3.2 What can be done?

To increase the likelihood of desired benefits materializing, one key prerequisite is to have an appropriate business, legal and regulatory environment. For agro-investment in particular, incentives as well as procedures for acquiring or otherwise accessing land and water rights must be transparent, consistent, and designed in a way that respects all stakeholder interests. Then they must be applied in non-discretionary and non-discriminatory ways.

That depends on two conditions. First, data on land ownership, including pending and approved requests for land, should be publicly available. Such data should include the nature and volume of associated investment, planned arrangements in terms of production, employment, lease/tax payments, and any other services to be provided by investors. Secondly, incentives for investors should be clear, cross-compatible, and easy to process impartially.

### **3.2.1 Information is easily available to relevant actors**

A lack of public information on proposed land, water, rangeland or forestry transactions undermines legitimacy, and can create suspicion and distrust that will eventually hurt all parties. Having meaningful information about proposed, on-going, and concluded projects available publicly can also create the preconditions for: (i) greater competition among investors, which leads to more realistic compensation for land rights; (ii) local checking of the extent to which investors comply with their obligations (e.g. in terms of area cultivated, utilization, and distribution) and taking measures to encourage compliance; and (iii) avoiding the transaction costs or risks incurred by investors who have to check whether a given plot has already been requested by or transferred to another party.

Putting information on land ownership and transactions up for public scrutiny is normally the function of land registries. While the extent and modalities of access to such information vary depending on national legislation, publicity of such information is essential for such registries to function. Modern technology makes it much easier to make existing information available to a large public. The case of digitizing land records in India illustrates how this can be done and the tremendous impact it can have in terms of improving the quality of information (by allowing checks through owners), reducing corruption, and increasing the volume of transactions and credit access. The challenge is in ensuring the quality of registry information and in maintaining its currency over time. This was evident in some of the World Bank's case study countries, e.g. Peru, Ethiopia, Indonesia, Brazil, and Mexico.

Given its potential in terms of improving transparency, building confidence, facilitating local participation and monitoring, and removing numerous threats to investors' property rights, a strong case can be made for making key information on pending requests as well as lands allocated to outside investors available in a registry that is publicly accessible, ideally on the internet. In fact, both Cambodia and Sudan have websites that aim to make such information available, although both seem to be incomplete.

Without infringing on necessary confidentiality, the information reported should be meaningful (including geographic location, intended product mix, projections of area cultivated and employment generated, compensation paid, and expected tax revenues) and regularly updated. Similarly, in some countries (the United States, for example), the prices paid for specific land transactions are publicly available on the web. Where existing land registries or information systems are too weak to serve as the platform for this, a separate platform can be established, although the danger of duplication should be avoided by closely linking this platform to existing systems and possibly to a more comprehensive effort at registry modernization.

### **3.2.2 Incentives for investors are clear and effective**

To attract investment, many countries provide economic incentives such as tax breaks or low cost land. However, such incentives may end up attracting speculative investment or undermining governance with little positive effects for the host country if either of two conditions prevail: (i) incentives are not given in return for provision of productive infrastructure or other goods that can have positive spillover effects beyond the project area, or (ii) incentives are awarded in a discretionary process, with local right holders rather than the general public bearing the associated cost of using public assets (i.e. when land is given for free).

To prevent this from happening, guidelines for investment proposals need to clearly specify developmental and fiscal goals (e.g. employment or investment per hectare or the prospect of future tax revenues) that can be verified *ex ante* as well as during implementation of an investment.

Evidence suggests that incentives provided by host and sometimes outside governments have a strong bearing on private investment decisions, both at the macro and the micro level. Bio-fuel mandates have been a main incentive

for establishment of sugarcane and jatropha plantations. Even though West Africa is less suitable for oil palm than Indonesia, for example, many investors are targeting countries there to benefit from ACP subsidies. In Indonesia, government programs provide incentives to establish a wide range of industries or locations that are perceived to be of strategic importance. For example, a recent program (Bio-energy Development Loan-Plantation & Revitalization) aims to establish 2 million ha of oil palm, rubber, and cacao plantation by 2010, with a 2008 budget of \$3.6 billion. Firms become eligible for the subsidy only when 75% of the investment has been made. The importance of incentives is illustrated by the fact that most of the investors engaged in land-extensive enterprise in Africa indicate that without the ability to benefit from subsidies, most of their ventures would not be viable economically. Yet because many of these incentives are given up-front (e.g. in the form of cheap land), the potential to enforce compliance with commitments made is very limited, and the implications of non-performance (e.g. payment of performance bonds or recovery of land in case the firm goes bankrupt) have not been systematically addressed by many host governments.

### **3.2.3 The business, legal and regulatory environment is appropriate**

Testimonies from many investors in this area highlight that shortcomings in the business, legal and regulatory (BLR) framework are a key obstacle to their operations or have led them to exclude certain locations from consideration. The environment comprises a mix of policies, laws and regulations and the way they are implemented, some of which are measured objectively by the World Bank's 'Doing Business Indicators'. Yet the environment also comprises harder-to-verify realities such as biases or absolute lack of policy enforcement, as well as perceptions regarding a country's stability and the general business climate. Improvement in both tangible and intangible attributes requires regular dialogue with investors and other stakeholders to understand inadequacies in the BLR framework and to identify options for reform. Such dialogue can provide useful guidance for host governments to develop better policies and regulations governing agri-business and trade, to improve the perceived quality of the climate for entrepreneurship, and to raise the overall level of political, economic and social stability.

## **CONSULTATION AND PARTICIPATION**

**Principle 4: *All those materially affected are consulted, and agreements from consultations are recorded and enforced.***

Sustainability of investments and realization of synergies from allocation of public assets to major projects as well as provision of complementary public goods by the investor require that such investments be designed in a participatory manner, consistent with local people's vision of development. Even in countries that already require local consultations as a precondition for project approval, the impact of such requirements is often limited by a lack of clarity on process, the nature and recording of outcomes, and ways to enforce agreements reached in the course of consultations.

To make consultative processes more effective: (i) definitional and procedural requirements in terms of who represents land holders and what is a quorum for local attendance need to be clarified; (ii) the content of agreements reached in such consultations (e.g. by providing model agreements/contracts) should be documented and signed off by all parties; and (iii) methods for enforcement and sanctions for non-compliance should be specified. Incentives to adopt such a process can be greatly enhanced if taxes to be paid by investors are clearly specified, independently monitored, and accrue at least in part to local governments responsible for making available local public goods.

### **4.1 Why it matters**

Lack of consultation is likely to result in projects having a harmful impact on some individuals and groups who may lose rights or livelihoods without due compensation, whose surrounding environment is degraded, or who are excluded from possible profit sharing mechanisms, all of which can lead to conflict. On the other hand, full and open consultation during project preparation can lead to strategies that spread benefits, mitigate potentially negative social, environmental or economic impacts, and that in the end enhance sustainability in every sense.

## **4.2 What can be done?**

Since vulnerable groups and the poor generally lack information, voice and influence, they should be protected by government. If they will be affected by a proposed project, adequate mechanisms for inclusion of these groups as well as women in decision-making should be adopted. Although consultation of materially affected stakeholders on a case by case basis in the context of specific projects is a prerequisite for successful investment outcomes, such consultation should not be a one-time event but instead involve ongoing interaction with community representatives, as well as local governments. Experience suggests that chances for success are enhanced if: (i) the specific groups likely to be affected by the project are involved in a meaningful way with adequate representation and consultation, including on issues of project design; (ii) selection of project areas builds on participatory land use planning at the local level (thereby empowering local governments to look out for the interests of the poor and vulnerable by integrating projects into local development plans); and (iii) there is continuous dialogue and monitoring to ensure that agreements are enforced.

### **4.2.1 Embedding large-scale ventures in local development plans**

Even before considering specific investment proposals, it is important to take measures to ensure that such proposals are consistent with local visions for development. Linking investments to local land use and overall development plans, and making sure that they are vetted by local governments, users of land and water, and civil society through a participatory process are ideal ways to achieve this. They can help guide the location of large-scale land-related investment and offer benefits to both locals and investors, including: (i) optimal use of agro-ecological potential; (ii) reduced potential for conflicts with local right holders; (iii) location of investment consistent with actual or planned infrastructure (roads, bridges, etc.) so as to maximize benefits; (iv) drawing on local knowledge regarding, e.g., soil suitability; and (v) avoidance of unwittingly “giving away” culturally or environmental sensitive areas. Mechanisms to quickly establish such plans, ideally together with identification of rights, have been applied successfully in a variety of settings and are easier to implement with satellite imagery. For example, in Chattisgarh, one of the more backward states in India, such plans were established on a systematic basis at the request of village governments (*panchayats*) to not only help with administrative tasks such as tax collection, infrastructure planning, and water resource management but also to identify areas suited for development of horticulture and communal lands for plantations that could provide benefits to the poor and landless. This illustrates not only the scope of using modern technology to establish such plans at low cost and their potential usefulness to articulate a shared vision of development.

Although many countries have a requirement of land use planning in their legislation, this is often not implemented on a systematic basis, or else it is undertaken with little, if any, public input. Even in Tanzania and Ethiopia, where local land use plans have been established on a more systematic basis at least in some regions, the information they contain is not easily available to outsiders in a systematic way, and there is considerable potential for improvement. The potential of using local land use plans for environmental purposes is best illustrated by the case of Brazil, where some states have embarked on a significant effort with support by major multilateral institutions, to establish such plans as a tool to mainstream environmental issues and ensure that large land holders comply with broader environmental obligations.

### **4.2.2 Meaningful consultation and representation**

An important initial lesson emerging from case studies is that even where community consultation is formally required to approve land investments, it may not offer communities adequate opportunities to either voice their concerns or hold investors accountable. Ideally, local communities should be included in investment decisions when these decisions affect their property, livelihoods, culture, or relationships between groups. If it is to have meaning, the consultative process should allow communities to turn down investors if they so desire. To make consultations more effective, three issues need to be addressed. These include: (i) representation at local and community level defined so as to provide investors with ‘somebody to talk to’ but at the same time reduce risks of elite capture; (ii) existence and use of guidelines regarding the content of consultations; and (iii) a formal record to document the content of discussions and agreements reached, which should ideally become part of the broader

contractual arrangements. It is also important to ensure that vulnerable populations, including cultural and ethnic minorities, and in some cultures women and youth, are consulted in ways that allow them to truly express their opinion by selecting appropriate venues and languages for communication. Furthermore, because vulnerable populations are often affected differently than other populations, if investment projects are to avoid social risks, mechanisms to consult these populations should be included in project plans.

One country that has recently moved in the direction of more effective consultation is Mozambique, where standardized forms to structure consultations have been introduced, although these are not automatically included in contracts.

Anecdotal evidence from countries such as Ukraine, where local government has a key role in intermediating between land owners and outside investors (Box 6) suggests that giving a greater role to elected community representatives can improve outcomes for small farmers and land owners. Investors can derive benefits by gaining access to local knowledge on agro-ecological environment and past failures.

Box 6: With an average land holding size of 2-7 ha and a moratorium on land sales in Ukraine, investors must aggregate large land holdings through direct lease negotiations with local landholders, a decentralized process which is governed by individual *rayon* (district) laws and arbitrated by *rayon* chiefs. Investors interviewed for this study suggest that negotiating investments with local authorities generate larger social benefits, including support to road maintenance or financial assistance to poorer households. At the same time, they benefit investors through improved community relations and easier management as well as renewal of leases all of which are short term. In addition to employment-related benefits, there are tangible technology spillovers: Use of hybrid grain seed provided by the large operator on land holders' house plots increased yields by 20-30%, a figure that increases to 100% if combined with machinery services and farm management skills provided by large operators as part of the agreement.

In Mexico, most of the successful cases of large-scale investments also involve active participation by the local population in project design, and in many cases also management, as well as contracts that are relatively short term and that allow for expanding land owners' responsibilities as they gain greater experience.

#### **4.2.3 Meaningful and enforceable agreements**

Consultation should ultimately lead to proper contractual arrangements. While contracts regarding the modalities under which land is transferred and used are fundamental to the economic, social, and environmental success of a project, those used in this large-scale agro-enterprise phenomenon often lack the detail common for operations of similar magnitude and complexity that occurred in the past in other industries such as oil, gas and mining. Three issues that tend to get omitted are: (i) the nature of transferred rights; (ii) the mechanisms to protect against speculative land acquisition; and (iii) enforcement capacity.

In many cases, investors are able to acquire leases of relatively short duration that can be renewed, possibly on pre-determined terms. In others, governments transfer long-term lease rights but condition them on adherence to pre-determined progress indicators such as implementation of business plans. Often, the ability to transfer land rights to others is also restricted, which is a problem if investors become insolvent. It is important that contracts clearly specify the type of rights and modalities under which they are transferred to prevent creditors from taking over the land and devoting it to uses that may not be in line with original agreements.

Countries with a high demand for land-related investment have a legitimate interest in preventing speculative land acquisition whereby 'investors' acquire land on favorable terms in the expectation of making windfall profits by selling once it has appreciated (e.g. due to public infrastructure investment), yet in the meantime fail to make productive use of the land, even in contradiction with their original commitment, which prevents others from doing so. The most effective way to guard against speculation and ensure that contractual agreements regarding land use are respected is to reduce initial incentives for investors that may cause them to demand large amounts of land that they cannot effectively cultivate, by fixing reasonable taxes or rental fees, and by requiring significant performance bonds.

Yet even the most carefully crafted contracts will be worth little if provisions cannot be enforced effectively (Box 8). Weakness and the high cost of formal judicial institutions in many of the countries of most interest to investors

increase the importance of accessible and legitimate fora to resolve conflicts before they escalate. Examples of successful intervention include establishment of alternative dispute resolution mechanisms that offer recognition of solutions arrived at by local informal bodies provided they follow principles of accountability, equity, and due diligence. In cases where such investment is widespread, the establishment of a dedicated agency for conflict resolution, modeled on the successful examples in case study countries such as Mexico, might be considered at the local level. At the same time, since some of the agreements involve sovereign entities, the issue of how disputes in this context might be resolved will need to be carefully addressed.

Box 7: A biofuels company in Mozambique held consultation meetings with communities, aiming to get access to a local forest in exchange for significant job creation in the area of the investment. Communities agreed to this exchange, but the company has run into financial difficulties and has not been able to create the number of jobs it has promised. Forest resources have since then been depleted by the company, and local communities now do not have access to this site for firewood or for accessing small pools of fish. The company has also been depleting local water sources: a Government program had provided hand pumps for local wells, and the company is now using these sources to fill up water tankers for company use. Company trucks also degraded local roads, resulting in the company building new roads for its own use, but forbidding access to the road to local populations. No mechanisms exist for communities to hold the investor accountable for its promises or for its contribution to a degraded environment.

## **RESPONSIBLE AGRO-ENTERPRISE INVESTING**

**Principle 5: *Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value.***

As key players in this sensitive arena, investors have a special responsibility to apply high standards in the design and execution of their projects. Economic viability, which in turn rests on technical feasibility, is a precondition for the generation of benefits that can then be distributed among shareholders and cooperating stakeholders. Fairly assessing likely viability, and then taking steps to make sure it is achieved, are both in the interest of all involved, not just the private investor. Where the resources in question are publicly owned, or if other public assets such as tax breaks and complementary infrastructure are being offered as incentives, cognizant governmental agencies have an obligation to carefully check the feasibility analysis to ensure that host countries, affected communities, and local stakeholders are all likely to benefit. National or regional bodies may have to assist states, provinces or municipalities that are technically unable to review major projects proposed within their jurisdiction. On the recipient country side there is also a need to integrate the proposed enterprise into broader strategies.

As far as the investors are concerned, aside from conducting proper due diligence and project analysis, they should be expected to: (i) comply with laws, regulations, and policies applicable in the host country (and ideally with all relevant international treaties and conventions); (ii) adhere to global best practices for transparency, accountability and corporate responsibility in all sensitive areas; and (iii) strive not only to increase shareholder value but also to generate significant and tangible benefits for the project area, affected communities, and host country.

### **5.1 Why it matters**

If projects are not economically and technically viable, or not implemented in a responsible manner, most or all parties to large resource-related deals will lose. Ascertaining a project's technical and financial feasibility is largely the responsibility of investors whose capital is at risk, yet it is prudent for counterpart entities to carefully examine assumptions and the quality of the analysis. Both sides need to recognize that proposals precipitated by high food and energy prices may not be viable under changing economic conditions. Yet numerous case studies of the on-going phenomenon have shown that some projects were/are in fact speculative, and not likely to go ahead or prosper under more "normal" conditions.

While increases in company and shareholder value will always be the main concern in any for-profit endeavor, lasting success in land-extensive agro-enterprise in developing countries requires that this vision be broadened to ensure that the host country and local communities benefit substantially and openly. The style and methods used

by investors exploring possible ventures will not only set the tone, determine the direction, and affect results of the feasibility, consultation and design processes, but also influence later outcomes. For major projects, leadership should come right from the board and CEO, then be effectively transmitted through regional or divisional executives, and finally be applied over time by general management at the country and enterprise level.

The recipient country's agricultural strategy may cause it to favor certain types of investments that contribute more to its long-term development goals than others. This is acceptable. However, conforming investments should probably have preferential access to incentives and other public goods.

## **5.2 What can be done?**

### **5.2.1 Adherence to high standards of business practice and ethical behavior by investors**

Proper practice in primary agriculture, agro-processing, and manufacture of derived goods includes due diligence by actors all along the supply chain to protect human life, health, and welfare. For firms that are not completely integrated, at a minimum they need to look “one-step backward and one-step forward”, which means that a firm's responsibility begins with their immediate suppliers and ends with their immediate buyers. For more vertically integrated enterprises corporate responsibility may span multiple steps in the supply chain. Given the sensitivity of large-scale agro-enterprise in developing countries, best practice in this arena implies that enterprises should treat the whole chain as within their manageable interest, even when they are not completely integrated, because that is the only way to protect brand, company image, and the industry's reputation.

While many of the specific themes that define responsible investing are covered in detail by other principles—most notably those relating to transparency, access to productive resources, social and environmental sustainability and food security—major investors should apply best practices in four other important areas.

First, responsible investors respect human rights. The United Nation's [Universal Declaration of Human Rights](#) promulgated and ratified in 1948 showed the way initially, but the UN's [Global Compact](#), to which more than 5,000 major corporations have subscribed, went beyond the Universal Declaration in more recent times by specifying that: (1) businesses should support and respect the protection of internationally proclaimed human rights; and (2) businesses should make sure that they are not complicit in human rights abuses.

Secondly, investors should respect worker rights. ILO's [Declaration on Fundamental Principles and Rights at Work](#) provides useful guidance for agricultural workers. Core topics include: Freedom of Association and Collective Bargaining (conventions 87 and 98); Elimination of Forced and Compulsory Labour (conventions 29 and 105); Elimination of Discrimination in Respect of Employment and Occupation (conventions 100 and 111); and Abolition of Child Labour (conventions 138 and 182). Again, the Global Compact has already adopted and codified these principles to make them easier for businesses to follow.

Third, investors should protect occupational safety and health at each and every step in the supply chain. National policies and regulations provide the foundation, but competitive forces often drive firms farther.

Fourth, investors in agri-food enterprises should adhere to best practices in food safety. For products derived from agriculture as well for manufactured food products, global food safety regulations and related codes are mostly based on [Codex Alimentarius](#). The latter sets minimal standards for quality and safety, defines guidelines and issues documents around which countries make adjustments to match both local circumstances and acceptable levels of protection. When a company begins producing food products, at a minimum it should conform to official food safety regulations in both the source and target markets (if different).

While compliance with public standards can be considered the foundation for responsible corporate behavior, there is also potential added value provided by emerging private standards in terms of greater specificity, adaptation to specific industries or commodities, and the weight of the marketplace.

Most private standards treat relevant public standards as the point of departure for constructing more detailed and often more stringent specifications, some of which evolve into *de facto* commercial requirements to access and succeed in higher value and higher volume markets. To compete in such markets, which most large agro-

enterprises want and need to do to achieve desired scale and profitability, the firm typically has to comply with one or more private standard schemes and to verify conformity through certifications and audits.

Some examples are worth mentioning, without any implied endorsement on behalf of the authors. For pre-farmgate workplace and production standards in agriculture, [GlobalGAP](#) is perhaps the most prominent example. For a vertical industry, which involves not just primary production but processing, the [Roundtable on Sustainable Palm Oil](#) is well-known. For downstream activities in packaged food and other consumer products, the [Global Social Compliance Program](#) is working to translate ILO principles for workers' rights, as well as other generally accepted practices for occupational health and safety into more specific, practical standards for facilities involved in manufacture, distribution and retailing. For the whole range of food products, whether fresh or processed, the major benchmarking scheme [Global Food Safety Initiative](#) is striving to bring acceptable private standards under a single umbrella for food safety, in order to reduce complexity and costs of compliance. Many of the private standard schemes in turn seek to follow guidance from other specialized organizations that offer meta-standards or benchmarking. For example, ISO has published a standard for all standards, while ISEAL Alliance has produced a useful code of good practice for social and environmental standards.

Of course, the authors also have safeguard policies to guide their own operations. The main topical areas include: use of country systems; environmental assessment; natural habitats; pest management; indigenous peoples; physical cultural resources, involuntary resettlement; forests; safety of dams; projects in international waterways; and projects in disputed areas. The World Bank Group also follows [Environmental, Health, and Safety \(EHS\) Guidelines](#). These general guidelines are designed to be used together with the relevant [Industry Sector EHS Guidelines](#) which provide guidance to users on EHS issues in specific industry sectors: mammalian livestock production, poultry production, plantation crop production, annual crop production, sugar manufacturing, vegetable oil processing, dairy processing, fish processing, meat processing, poultry processing, breweries, and food & beverage processing.

### **5.2.2 Cost-effective processes to assess viability and monitor implementation by governments**

Governments of recipient countries and investors share a responsibility to ensure that desirable projects are designed and well implemented. Governments can provide potential investors with adequate information and support that will help investors assess the profitability of their project and fine tune it to existing constraints and opportunities. Providing relevant information will reduce uncertainty and help investors better assess the viability of their project. However, the objective of attracting investments should not be pursued to the detriment of selecting investments likely to be implemented as planned and to generate the supposed benefits.

It is important for governments to have in place a transparent process for independent public screening of project proposals, at least in cases where public land is concerned, where subsidies are provided or when the government partly or fully represents right holders in the land transfer process.

In all the situations where it is warranted, due diligence carried by governments should: (i) begin with thorough vetting of the investor; (ii) proceed to identify potential long-term economic, social and environment benefits and costs; (iii) identify and quantify external effects; and (iv) define and assess risks of all types as well as mitigation measures. Particular attention should be devoted to key elements such as the opportunity cost of land (which can be put to alternative uses), the net employment generation capacity of the project (since projects may both destroy and create jobs), the project's capacity to stimulate other firms or sectors (e.g. through backward linkages or technology transfers), as well to its role in fulfilling strategic goals for the agricultural sector or the economy as a whole (such as increased overall production, diversified exports or import substitution).

Public screening should require substantive rather than just procedural screening of projects' basic economic viability. Yet in most of the situations where such screening is required, technical capacity and staffing in the public sector will be scarce as well. Most countries use thresholds regarding project sizes for which approval can be provided by local rather than central government to ease the administrative burden, a practice that indeed has many advantages. Due to lack of capacity, even proposals with highly unrealistic assumptions (e.g. yields) and thus high risk of failure are often accepted. In Mozambique (Box 9), even screening processes at the national level



suffered from shortcomings. To improve these, measures were taken to (i) standardize the way in which information is presented; (ii) focus scrutiny on investments above 1,000 ha; (iii) give better technical guidance on analysis; and (iv) adopt a two-stage process consisting of a pre-screening followed by more detailed analysis at a later stage. These have wider applicability and can be implemented in other countries, possibly with external support.

Box 8: Mozambique has 34 mn ha of land suitable for agriculture, 3.7 mn of which is cropped. Efforts to attract investors resulted in applications, many speculative, for some 13 mn ha, in just 18 months. This led the Government to realize that, despite its relatively ample availability, land is a finite resource that should contribute to broader development goals. In addition to a moratorium on land transfers, pending the identification of ‘available’ land for investment in a local planning process, this also led to revision of the process by which projects were approved. The type of information to be submitted by investors is now laid out in considerable detail in relevant regulations, with greater emphasis on economic issues. A recent study identifies areas for improvement that would allow further improvement in this direction, i.e. (i) a two-stage process; (ii) standardized presentation of information; (iii) providing staff with skills and written material (e.g. technical coefficients, cost per ha, investment requirements, of main crops; blacklist of investors) to facilitate their task in coordination with the general Investment Promotion Agency (CPI).

As many large land transactions are private, the question arises as to how government can screen proposals. One approach is to make the right to conduct certain due diligence a condition for granting rights such as access to land, changes in land use, or licenses to operate. Alternatively, when the investor seeks public support of any kind, such as the granting of fiscal incentives or co-investment in surrounding infrastructure, the right to conduct economic analysis can be made a condition precedent to such support. Otherwise, it is usually specific regulations that trigger a public review process, for example, a requirement to conduct an environment assessment or present an environmental impact statement before ground can be broken on a project of significance.

## **SOCIAL SUSTAINABILITY**

### **Principle 6: *Investments generate desirable social and distributional impacts and do not increase vulnerability***

Even economically viable and sustainable projects may have undesirable social consequences if they involve uncompensated displacement or if benefits bypass vulnerable groups or are captured by local elites. A thorough understanding of cultural context, sources of vulnerability, potential for conflict, and livelihood and food security strategies, can help identify design options to reduce risks and maximize positive impacts at the project level.

Social sustainability can be enhanced if: (i) relevant social issues and risks, as well as strategies to mitigate these and increase social benefits, are identified during project preparation and adequately addressed by government and investors; (ii) the interests of vulnerable groups and women are considered explicitly; and (iii) generation of local employment, transfer of technology, and direct or indirect (e.g. via taxes) provision of local public goods is part of project design.

#### **6.1 Why it matters**

Large-scale investments in land have the potential to transform communities. They can affect the sources of people’s livelihoods, the resources available to them, and the relationship between groups. The vulnerable, in particular, are likely to be very sensitive to changes in resource allocations. Whether results are positive or negative depends on: a country’s policy, legal and institutional framework and its implementation capacity; the intrinsic design of the project and how it executed; and on the arrangements made by and with investors.

Social impacts of land-extensive agri-business investments are rarely the focus of either governments or investors. Many assume that positive social effects will occur automatically as resources pour in and jobs are created. Technology transfers and improvements in infrastructure are also assumed to happen automatically, as investors bring in new skills and build up regions to make their investments more profitable. In fact, the achievement of such effects even at the project level usually depends in deliberate public-private collaboration and joint planning. Yet the potential for countries to work towards meeting social objectives through integration of investment opportunities into national and local development plans remain largely untapped.

Even where mechanisms to safeguard populations from negative effects of investments are written into legal frameworks, investor plans, and agreements, frequently implementation or enforcement of such mechanisms is lacking. Moreover, governments and investors usually lack the capacity to estimate macro-level and indirect effects of investment, which sometimes can lead to underestimating costs or overestimating benefits. All of these issues often raise concerns that can lead to national level debates and local level conflicts as news of impending investments spreads, substantially decreasing potential positive social effects of investments, as well as increasing costs for investors and governments.

## **6.2 What can be done?**

An overriding objective should be that benefits from investments be shared in a way that does not unfairly benefit specific groups, but that fosters equitable, sustainable social development. To make sure that this happens, individuals materially affected by the investment—whether directly or indirectly—should be involved in making decisions about investment arrangements and need to be adequately and fairly compensated for possible losses. This requires a common understanding among stakeholders of the cultural context, gender issues, sources of vulnerability, potential for conflict, and livelihood and food security strategies. Specific, culturally appropriate solutions, for instance, need to be in place for vulnerable individuals (including, but not limited to, cultural and ethnic minorities, women, and sharecroppers) as well as the poor, who could be negatively affected by an investment. Mechanisms that promote fair sharing of benefits, creation of local jobs, technology transfer, and improvements in local infrastructure should also be emphasized to increase the welfare of all stakeholders.

Social and economic analysis (referred to elsewhere) will look at direct impacts of any proposed large-scale investment on the vulnerability of affected populations. Such investments may have impacts on the demand for wage labor as well the operation of markets in their immediate surroundings, which can have broader repercussions. While available studies are limited, the evidence suggests that, if labor-intensive production techniques are used, the benefits can be significant. This underscores the need for careful design and dialogue in the project development (Box 9) stage. It also implies that a closer look at the provenance of the proposed work force, as well as adherence to international standards regarding provision of decent wages and working conditions, freedom of association, and humane treatment of workers, will be important.

Box 9: The importance of labor-market effects is illustrated by the tomato sector in Senegal which, to be able to comply with EU phytosanitary requirements, is run by a single multinational that is fully vertically integrated, produces on its own land without involving local farmers, and dominates the local labor market. While this would normally be expected to be associated with undesirable outcomes, empirical data show that both production and labor demand have increased significantly, and a recent study shows that labor demand does not favor the rich or better educated. As a consequence, small farmers in the project area have not only significantly increased their welfare and food security, but are also significantly better off than those in neighboring areas where no investment has taken place.

### **6.2.1 Providing for fair compensation**

Because the largest negative impact of these projects is likely to be displacement, mechanisms to avoid loss of land rights without adequate compensation in these investments need to be strong. Governments need to ensure that contracts with investors and government policies require adequate consideration of the rights of those that may be displaced by investment. Expropriation should only be used as a last resort, and only if justified by the strict public interest. In all other cases, individuals directly and indirectly affected should agree to investment arrangements before these can be implemented. These arrangements should have the aim of ensuring that those losing land rights, especially those holding informal or secondary rights (e.g. pastoralists, women, tenants, and indigenous peoples) should receive fair compensation that would allow them to maintain or improve their previous livelihoods and standard of living (Box 10). They should also aim at protecting people's culture and social structures to the extent possible. Compensation and resettlement plans should be accompanied by clear public information campaigns that state rights and responsibilities of different actors, minimizing the risks of misunderstandings leading to social conflict, allowing affected individuals to hold other actors accountable, and decreasing longer term costs to investors and governments.

Box 10: Good practice in providing compensation is found in Sichuan Urban Development Project. The project affected approximately 648 persons living in 171 households. The project, which supported the development of urban areas, including the development of industrial parks, affected those who lived from agriculture in areas where land use was converted for urban purposes. Affected individuals, however, were consulted before the project took place, and agreed to an innovative compensation scheme. The yearly income of farmers was calculated, and the Government committed to providing those who would be displaced with the same amount of income for life. Affected people were also given access to skills training courses that would allow them to find new sources of livelihood.

### 6.2.2 Benefit-sharing arrangements

Ensuring social sustainability requires the sharing of social benefits arising from investments among all stakeholders. Such benefit sharing is usually decided by the investor, who benefits from arrangements that improve its relationship with local communities. Benefit-sharing arrangements that maximize social development, however, are best when decided jointly by local communities, investors, and local governments. These arrangements should include enforceable provisions for including communities in decisions surrounding local development, and for including infrastructure and other benefits in the development plans of local governments. Ideally, partnerships between local communities, governments and investors should agree on an optimally balanced sharing of benefits that is acceptable by all (Box 11).

Box 11: An example of an investment project that has aimed at maximizing synergies between investors and local populations is the EduCampo Chiapas project in southern Mexico. The project was founded in 2007 by a local civil society, non-profit group that organizes groups of farmers, provides them with basic education, builds their technical and administrative capacity in project management and provides technical advice on accessing credit and Government incentive programs. The EduCampo Chiapas involved 1,483 farmers on over 7,000 hectares. The farmers received financing for a technology package, social education and technical assistance. In the third year of the project, farmers are set to receive 50% of their financing from providers of inputs and another 50% of their financing from other sources. From the fourth year on, farmers will continue to receive technical advice and social education. The project will allow farmers to increase their outputs 900% in less than four years, and to increase farmer incomes by 400%. This is expected to have significant poverty-reduction effects in a process that maximizes community participation and maximizes agricultural outputs.

## ENVIRONMENTAL SUSTAINABILITY

**Principle 7: *Environmental impacts due to a project are quantified and measures taken to encourage sustainable resource use while minimizing the risk/magnitude of negative impacts and mitigating them.***

Despite the potential importance of possible negative impacts on availability or quality of key natural and environmental resources outside the immediate project area or beyond the project's lifespan, investors have little incentive to take such impacts into account. Thus, regulation at the level (i.e. either local, national, or global) where externalities arise will be desirable to ensure that such goods, which may include local access to forest products, water, or soil quality, are not jeopardized. This will need to include impacts on natural resources that may be located far from the project site, such as river basin impacts or social dislocation resulting from the project causing deforestation elsewhere. Capacity to monitor will be particularly important due to the fact that such effects will materialize only in the course of project implementation and investors may renege on previous agreements.

Investors and government need to collaborate to ensure that: (i) independent environmental impact analysis to identify potential loss of public goods, such as biodiversity or forests, is conducted prior to approval; (ii) preference be given to reclaiming or increasing productivity on areas already used rather than clear new land; (iii) the most appropriate production system is selected to enhance the efficiency of resource utilization while preserving the future availability of current resources; (iv) good practices in agriculture, processing and manufacture are followed; (v) provision of desirable ecosystem services is encouraged; and (vi) negative impacts are addressed through regularly monitored environmental management plans and compensated where appropriate.

## 7.1 Why it matters

A key concern is that large-scale investments intended to increase agricultural production in the short term could lead to longer term land degradation or reductions in ecosystem sustainability, including water resource depletion (for water-intensive crops) and potentially significant losses of pristine forests, biodiversity, and other natural habitats. On the other hand, well-managed agricultural investments could enhance ecosystem services if land management techniques are employed that conserve soil and moisture, protect watersheds and restore vegetation.

The most important objective of environmental analysis is to prevent seemingly profitable investments from disregarding environmental costs and benefits and resulting in—potentially significant—destruction of natural resources or other unintended negative external effects. Also, in addition to avoiding negative environmental impacts, an environmental analysis can help harness the potential of large-scale investments to deploy environmentally friendly practices. A key element in environmental sustainability, however, is compliance with agreements reached as a result of environmental analysis and management planning. Contrary to economic analysis, where little extra effort for monitoring is required, implementation monitoring is essential to ensure that environmental agreements are complied with.

Environmental impact analyses (EIAs) and environmental management plans can both assess potential on- and off-site impacts, as well as other external effects that may be associated with a project. EIAs can also support not only mitigation, but also environmentally-enhancing interventions. These should be part of an investor's obligations during the project preparation phase, and the quality of environmental management plans could be a factor in competitive bidding processes. The quality of environmental impact legislation and regulations varies across countries, as does transparency and the capacity to enforce regulations. Large-scale investments may also need broader sectoral or strategic environmental assessments addressing indirect external impacts, including GHG emissions, river basin impacts or social dislocation resulting from the project causing deforestation far from the location of the investment itself.

## 7.2 What can be done?

Review of the legal and regulatory environment in case study countries reveals that most of these have environmental safeguards and regulations in place. At the same time, scope for improvement exists in linking EIA to other parts of the project approval process, improving government capacity, and monitoring compliance. For example, in Indonesia, EIA is required after a project has been approved. Country studies reveal that regulations are often implemented in a discretionary way, responsible institutions' capacity is limited, and overlapping competencies exacerbate the challenges for enforcement posed by limited staffing and capacity. While decentralized monitoring through civil society and local government could provide an alternative, avenues for the public to lodge complaints are limited. Given increasing global concern about these issues, addressing such gaps in a way that allows demonstrable compliance with standards is particularly important as verifiable progress may become a key precondition for the ability to access payments for environmental services. Similar assessments of good legislation but weak capacity exist for several other countries including Mexico, Zambia, Ukraine, etc.

As a number of recent high-profile events demonstrate, a number of investment characteristics of 'investment-worthy' land, in particular their relatively large size and their more direct control through government agencies, imply that areas with high environmental and biodiversity value are particularly vulnerable to being targeted by attempts to establish large-scale farming. This is especially the case in Africa. Experience outside Africa provides evidence of cases where establishment of plantations was often used as a pretext for getting access to land and associated resources (Box 11). The limited agricultural potential of the underlying soils and the failure of such ventures suggest that investment proposals require very careful scrutiny. In many cases, existing proposals may lack economic justification and indeed impose heavy social and environmental costs.

Box 11: With recent increases in demand for palm oil, oil palm plantations can make a major contribution to economic development and reduction of poverty in some regions, especially when involving outgrowers. In fact, Indonesia's oil palm industry is estimated to generate some 4 million jobs. However, recent calculations suggest that, out of roughly 18 mn ha of forests that were cleared to develop oil palm, only one third (i.e. 6 mn. ha) is actually used for oil palm plantations with the

remainder having been acquired for short-term benefits from logging without intention to establish oil palm plantations. High emissions of greenhouse gases resulting from the clearing of forests on peat lands are an additional concern. While the Government of Indonesia responded to concern over widespread forest clearing by declaring a moratorium on further rainforest clearing for estate crops, institutional overlaps may limit the effectiveness of enforcement. It is therefore important to complement government efforts with private sector initiatives, such as the round table for sustainable palm oil, an association of producers that has established standards for 'certified' palm oil, and independent monitoring of deforestation trends.

In situations such as Brazil and Indonesia, large-scale deforestation has led to a large amount of degraded land that is very attractive for large-scale land acquisition. In fact, agri-business companies have emerged that specialize in identifying such areas and developing them for intensive agricultural use, often with great success. To the extent that such activity does not encourage further deforestation at the agriculture-forest frontier, this investment can offer significant benefits. As the lack of capital is often a key bottleneck, credit to encourage such action could be very effective to encourage such action. If combined with efforts to improve sustainable management of existing forests, enforce existing environmental legislation (see Box 12), and policy advice, this could provide a means to draw away pressure from existing forests.

Box 12: Deforestation in the Brazilian Amazon occurred at a rate of 18,500 km<sup>2</sup>/year in the 2000-08 period. While recent policies to expand protected areas and campaigns to enforce the forestry code and protect private and Governmental forest reserves seem to have resulted in a slowing pace of deforestation, the magnitude of the phenomenon remains huge, especially in the state of Mato Grosso which has half of its land area located in the Amazon biome. In 2004, a local NGO established a system to improve access to information that is based on near real-time deforestation based on freely available satellite imagery. If illegal activity is suspected, ground investigations are conducted. The system, which is now implemented in cooperation with the state, shows that 85% of deforestation is illegal and has improved the ability of the Government to prosecute violators at an early stage. Its expansion into other Amazonian states is under consideration.

While the above suggests that environmental analysis will be required to monitor future large-scale agricultural investment and there will be a need for trade-offs, such investment can be associated with considerable environmental benefits. One example is the adoption of zero-tillage, as well as routine use of GPS to monitor soil and plant conditions, which has been pioneered by large-scale operations in the Southern Cone. By reducing the amount of inputs (e.g. fuel and fertilizer) needed, such technologies reduced the environmental footprint of agriculture significantly; in Ukraine for example, farm studies point to a reduction of fuel use by up to 80% with concomitant increases in profitability.

## Conclusions and next steps

Agreement was reached in September and October of 2009 among the main international agencies (World Bank, FAO, UNCTAD, and IFAD) that a set of principles for responsible agricultural investment involving significant acquisition of resource rights is warranted, and that the seven principles contained herein are essentially the right ones (although certain details will continue to be refined).

Agreement has also been reached among the same entities that a consultative process begun separately by the various agencies on this theme should now be expanded and carried out jointly. Commentary, suggestions, research and analytical input should be elicited from a broad swath of stakeholders (multilateral and bilateral donor agencies, civil society organizations organized thematically or geographically, all major investor categories (whether private or government-linked)). Moreover, to the extent possible, the process should generate support from all major countries from which investment initiatives are emanating and toward which such initiatives are directed. Making such a process as inclusive as possible will be critical to incorporate existing experience, generate buy-in, and ensure convergence on principles that are acceptable to the relevant stakeholders and can thus be implemented on the ground. The details of the requisite consultative process are now being worked out.

Following this, the principles will then need to be translated into actions for investors, governments, donors and international agencies, at different levels. While the scale and scope of the phenomenon may be new, and the

economic context uniquely challenging, a large body of evidence and best practice can be drawn upon to assist in areas where action is required. Three areas that are likely to be of particular importance include: (i) analysis to identify ways in which agricultural investment can be used to best contribute to national strategies for development and poverty reduction and how incentives for different actors can be structured to achieve this; (ii) legal, regulatory, and institutional changes required from governments and ways in which they can most effectively strengthen their capacity to secure land rights, enforce rules, and empower local stakeholders; and (iii) ways for the private sector to incorporate social and environmental concerns specific to this type of investments in project identification and implementation.

Publicizing good practice on how to address specific principles will be important to demonstrate that compliance is not only possible but in many cases serves stakeholders' long-term interests. Civil society can have a major role in helping to improve transparency, build stakeholders' capacity at the local level, and help those affected to make their concerns heard. Provision of assistance to identify priority areas for improvement and foster synergies, as well as options for making incremental progress towards meeting them would be important.

To ensure that agreement on principles, guidelines, governance frameworks and perhaps eventually codes of good or best practice is not just an empty declaration of intent, independent monitoring of the extent to which they are adhered to will be critical. The impact in terms of changed behavior of simply making information on performance or compliance public is evident from recent initiatives such as the World Bank's 'Doing Business Indicators' program, which regularly publicizes information on performance within and across countries. Investing firms and supporting governments are likely to be equally concerned about their reputation. Civil society can have an important role in helping local people to get heard, thereby strengthening investors' and source countries' resolve to agree on and move towards implementation of verifiable standards of responsible performance. And of course, recipient countries want to make sure that approved investments are succeeding.